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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

MAKI, STEVEN D

ART UNIT

PAPER NUMBER

1791

MAIL DATE

DELIVERY MODE

06/06/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Attachment

132 declaration

The 132 declaration filed 5-27-08 has not been entered and considered because applicant has failed to provide a good and sufficient reason why it is necessary and was not earlier presented.

remarks

Since the changes to the claims in the after final amendment filed 5-27-08 are OK TO ENTER, the heading for the rejection set forth in paragraph 2 of the final office action dated 11-27-07 simplifies to: "Claims 9, 14, 15 and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over King (US 2,198,776) and Sheridan (US 3,677,808) in view of Sleeter (US 6,277,310) and Song (US 6,010,596) and optionally Borsinger et al (US 2006/0289138)". In the after final amendment filed 5-27-08, the limitations of claims 16 and 17 were added to claim 9. Thus, claim 9, in the after final amendment filed 5-27-08, is rejected for the same reasons given in paragraph 2 of the final office action dated 11-27-07. Attention is directed to examiner's comments regarding claims 9, 16 and 17 in the final office action dated 11-27-07.

Applicant argues that US 2006/0289138 to Borsinger et al is not an appropriate reference under 102. Examiner disagrees and maintains that US 2006/0289138 to Borsinger et al continues to be available as prior art under 35 USC 102(e). With respect to excluding US 2006/0289138 to Borsinger et al as 102(e) type prior art under 35 USC 103(c), applicant relies on the 132 declaration filed 5-27-08. However, the 132 declaration filed 5-27-08 is not timely and has therefore not been entered. With respect

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to the provisional application, applicant's argument that pages 11, 12 and 13 of the provisional application 60/417,620 support claim 9 is not persuasive since pages 11, 12 and 13 fail to show that applicant had possession of the entire specific range of "greater than 200 degrees F to approximately 300 degrees F". The isolated disclosures of (1) melting wax having a melting point of 155-160 degrees F on a hot plate, and then mixing with boiling water, (2) oven heated to 257 degrees F and (3) oven at 200 degrees F fail to support the range of "greater than 200 degrees F to approximately 300 degrees F". Applicant has provided no convincing argument and/or evidence showing why "approximately 300 degrees F" was contemplated as the upper limit for the heating step. Support for example 1 in the disclosure of this application and support for "greater than 200 degrees F to approximately 300 degrees F" in claim 9 are different concepts.

Applicant argues that without any teaching of emulsion concentration in any of the references, claim 9 defines patentable subject matter. In response, examiner notes that claim 9 describes weight percent, which page 22 of the specification describes as meaning weight percent based on the total weight of the ingredients of the composition from which the set gypsum core is made. Claim 9 fails to describes the concentration of wax in the emulsion. With respect to approximately 1 to approximately 20 percent weight percent wax emulsion, King, Sheridan and Sleeter teach using wax to improve water resistance of a board. Albeit not preferred, King, Sheridan and Sleeter also describe applying wax in the form of an emulsion. Sleeter specifically teaches soy wax. When using an emulsion, no undue experimentation would be required to determine the optimum weight percent wax emulsion wherein the emulsion contains soy wax. This is

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especially true since, when applying wax in the form of a powder, King provides guidance in the form of the teaching of 0.5 to 15% wax by weight of the gypsum core.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven D. Maki whose telephone number is (571) 272-1221. The examiner can normally be reached on Mon. - Fri. 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on (571) 272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steven D. Maki/
Primary Examiner, Art Unit 1791

Steven D. Maki
June 4, 2008